CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

W15a

Filed:	08/25/00
49th day:	10/13/00
49-Day Waiver	09/19/00
180th day:	02/21/01
Staff:	K.Colin
Staff report:	12/26/00
Hearing date:	01/10/00

COASTAL DEVELOPMENT PERMIT

Application number…….3-00-092, Monterey Dune Public Access & Restoration Project

Applicants……..California Department of Parks & Recreation and City of Monterey, (Contacts: William Reichmuth, City of Monterey & Ken Gray, CA. Dept. of Parks & Recreation)

Project location…….Coastal dunes of Monterey State Beach between the intersection of Sand Dunes Drive and Canyon Del Rey and the intersection of Del Monte Boulevard and Ramona Avenue, at APNs 011-432-04, 011-432-14, and 011-432-15.

Project description……Request for permit to: (1) construct an approximate 4000-foot (14 foot wide) recreation trail; (2) removal of approximately 200 linear feet of asphalt paving from former petroleum tank access road; (3) removal of approximately 200 linear feet at the end of Sand Dunes Drive, as well as decreasing its width from 25 to 14 feet; (4) construction of 29-space parking lot and landscaping; (5) associated drainage improvements; and (6) restoration of approximately 8 acres of existing disturbed dunes.

File documents……..Draft Habitat Conservation Plan (7/12/00); Smith's Blue Butterfly Survey by Richard A, Arnold Ph.D. ((9/23/99); Smith's Blue Butterfly and Seaside Bird's Beak Survey (Davis, Jacoubowsky, Hawkins Associates Inc., 10/12/82); Botanical/Biological Report by Bruce Cowan (1/22/99); Mitigated Negative Declaration Adopted 5/2/00; Monterey State Beach General Plan (August 1987); Conservation and Management of the Endangered Smith's Blue Butterfly, *Euphilotes enoptes smithi*, Richard A. Arnold (Journal of Research on the Lepidoptera 22(2): 135-153, 1983); Ocean Harbor House Condominiums, Encroachment Permit Application and Alternatives Analysis, EMC Planning Group Inc., September 23, 1999; and Ocean Harbor House Apartments, Coastal Erosion Study and Revetment Design by Rogers Johnson and Associates, dated 12/15/83 and 1/31/84.

Agency approvals…….Conceptual approval by City of Monterey (5/2/00); U.S. Fish & Wildlife Service Section 10 Incidental Take Permit (pending).

Staff recommendation……. Approval with Conditions

Summary of Staff Recommendation

Staff recommends that the Commission approve, with conditions, the proposed recreation pathway and parking lot construction, and habitat restoration activities at Monterey State Beach. The project would provide a direct link to the existing Monterey Bay Recreation Trail that currently skirts the project sites eastern border. In addition, the proposed project would result in the restoration of approximately eight acres of currently degraded coastal dunes. On balance, the proposed project would further the public access and habitat enhancement goals of the Coastal Act by maximizing public access to and along the coast, creating a public access configuration which better addresses conflicts with sensitive species and habitats, and restoring a substantial area of coastal dunes. In response to these significant proposed public access and habitat restoration improvements, staff recommends that the Commission approve the project, subject to the following findings and conditions.

Staff Report Contents

1. Staff Recommendation on Permit

The staff recommends that the Commission, after public hearing, approve the proposed permit subject to the standard and special conditions below. Staff recommends a YES vote on the following motion:

Motion. *I move that the Commission approve Coastal Development Permit Number 3-00-092 pursuant to the staff recommendation.*

Staff Recommendation of Approval. *Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

Resolution to Approve a Coastal Development Permit. *The Commission hereby approves the coastal development permit on the ground that the development as subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the development on the environment.*

2. Conditions of Approval

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and

possessors of the subject property to the terms and conditions.

Special Conditions

1. **Project Approval & Final Plans:** This coastal permit approval is for the proposed bike path and parking lot (and associated pavement removal and site restoration). Any other site development, including a restroom, will require a separate coastal development permit or an amendment to this permit. The bike path, including associated drainage facilities, shall be installed according to plans by Creegan + D'Angelo, dated May 2000 and included in the application file (see Exhibit B). Any final plans or revisions shall be submitted for Executive Director review and approval, prior to construction. The parking lot shall be installed as shown on the aforementioned plans. PRIOR TO ISSUANCE OF THE COASTAL PERMIT, the applicant shall submit a final set of construction and maintenance plans for the parking lot, including non-point source pollution controls (see following condition # 2). Any subsequent revisions shall be submitted for Executive Director review and approval, prior to construction. Since the bike path and parking lot are to be installed under separate contracts, this permit can be issued in two separate parts; provided that all of the following conditions, except #2, would apply to both parts of the permit.

2. **Non-point Source Pollution Control:** The aforementioned drainage plans shall clearly identify all permanent measures to be taken to control and direct all site runoff. Such plan shall at a minimum provide for the following:

    1. The drainage system shall be designed to filter and/or treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event;

    2. Runoff from areas subject to automobile use shall be filtered by an engineered filtration system, or equivalent Best Management Practices, specifically designed to remove vehicular contaminants (such as petroleum hydrocarbons, heavy metals, and other particulates);

    3. All parking lot areas, driveways, and other vehicular traffic areas on site shall be swept and/or vacuumed at regular intervals and at least once prior to October 15th of each year. Any oily spots shall be cleaned with appropriate absorbent materials. All debris, trash and soiled absorbent materials shall be disposed of in a proper manner. If wet cleanup of any of these areas is absolutely necessary, all debris shall first be removed by sweeping and/or vacuuming, all storm drains inlets shall be sealed, and wash water pumped to a holding tank to be disposed of properly and/or into a sanitary sewer system;

    4. Any drainage system elements shall be permanently operated and maintained. At a minimum:

        (a) All traps/separators and/or filters shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: (1) prior to October

15th each year; (2) prior to April 15th each year; and (3) during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all traps/separators and/or filters must be cleaned prior to the onset of the storm season, no later than October 15th of each year;

(b) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner.

It is the Permittee's responsibility to maintain the drainage system in a structurally sound manner and its approved state. Any proposed changes to the approved permanent drainage plan shall be reported to the Executive Director. No changes to the approved permanent drainage plan shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. **California Department of Parks & Recreation General Plan Amendment**. WITHIN FIVE YEARS OF THE PERMIT ISSUANCE, the California Department of Parks and Recreation shall submit for Executive Director review and approval elements of an amended State Park General Plan for the site: amending the Plan for the current area covered and expanding coverage to the remainder of the park land. The elements submitted shall illustrate how long-term provision and management of public access will be consistent with resource protection of the environmentally sensitive habitat dune environment. Included shall be an updated Interpretation Plan (see condition #7). Evidence shall be submitted or included within the Plan demonstrating how the long-term park management is consistent with the results of the required habitat monitoring (see condition #6). Also, the amended State Parks plan shall address potential shoreline erosion and facility relocation consistent with condition #5 below. The five year deadline may be extended by the Executive Director for good reason. The submittal may be in the form of a condition compliance submittal, a Public Works Plan, or a coastal permit amendment (if aspects of this current permit need revision).

4. **Conformance with U.S. Fish & Wildlife Service (USFWS) Requirements**. PRIOR TO CONSTRUCTION UNDER THIS PERMIT, the permittee shall submit to the Executive Director for review evidence of approval, or that none is required, from the USFWS.

5. **Assumption of Risk/Shoreline Protection. BY ACCEPTANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall agree and acknowledge the following:

    1. The applicant acknowledges and agrees that the site may be subject to hazards from waves, flooding, liquefaction, erosion, and wildfire.

    2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.

3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.

4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. The applicant agrees that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.

6. The applicant shall not construct, now or in the future, any shoreline protective device(s) for the purpose of protecting the public access related development approved pursuant to coastal development permit 3-00-092 including, the recreation trail and parking lot. In the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives any rights to construct such devices that may exist under Public Resources Code Section 30235 and should consider relocation of the facilities if they become threatened by erosion or other coastal hazards.

6. Monitoring Program Submittal. PRIOR TO CONSTRUCTION UNDER THIS PERMIT, the applicants shall submit a habitat restoration monitoring program substantially in conformance with the revegetation monitoring program proposed in the July 17, 2000 draft Habitat Conservation Plan (HCP). However, the proposed HCP monitoring program shall be revised to include the implementation of spatially stratified random transects (as opposed to permanent transects); and explicit performance standards with which to judge the effectiveness of restoration, as well as a clear schedule and procedure for determining whether they are met. For revegetation, any such performance standards should include; identification of minimum goals for each species, by percentage of total plantings and by percentage of total cover when defined criteria are met. All performance standards should state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes should be part of every performance standard. Each performance standard should identify:

(1) the attribute to be achieved;

(2) the condition or level that defines success; and

(3) the period over which success must be sustained.

The performance standards should be specific enough to provide for the assessment of dune habitat performance over time through the measurement of attributes of dune habitat and functions including, but not limited to, vegetation and wildlife abundance. In conjunction with

these standards, the program should include measures to address those portions of the restoration that are unsuccessful and specify methods to remedy them. Long-term management and restoration efforts that are found necessary shall be incorporated into a revised State Park General Plan (see condition #1).

7. **Interpretation Plan.** PRIOR TO CONSTRUCTION UNDER THIS PERMIT, the applicants shall submit a plan for public use interpretation for Executive Director review and approval. This plan may be submitted as a component of the Habitat Conservation Plan. This plan shall indicate how public use of the project will be allowed and managed consistent with the objectives of the Habitat Conservation Plan. The objectives shall be that site visitors who park in the parking lot and/or bike or hike on the trail do not harm the sensitive dune habitat system. Physical elements may include signing, fencing, information brochures, closure areas, trash receptacles, ant the like. Management elements may include time restrictions on facility use (by season, nighttime restrictions, etc.), description of management personnel, and specifying various responsible entities' roles and coordination efforts. Included shall be a discussion of the signing and management of this link through the State Park in coordination with the existing regional bike path and its alternative route along Roberts Lake. The plan shall include a monitoring component and the results of the monitoring shall be incorporated into an amended State Parks General Plan (see condition #1).

4. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Background

Project Location & Setting

The approximate 33.8 acre project site is located in the City of Monterey, at the western terminus of Sand Dunes drive, west of Highway 1, and between the Del Monte Dunes subdivision and Monterey Hotel. More specifically, the project site constitutes the northern-most portion of Monterey State Beach, while the approximate 16-acre southern portion lies downcoast to the west of the U.S. Naval Postgraduate School. Other state beaches in the region of the project site include Marina State Beach to the north and Asilomar Beach to the west. There are also a number of other public access and recreational amenities located in the project's vicinity. These amenities include: (1) Monterey Bay Recreation Trail to the west and east, (2) Roberts Lake to the south, (3) vertical beach access at the U.S. Navy Post Graduate School, (4) lateral regional public access along the beach, (5) and the City of Monterey Wharf numbers one and two.

Site History

Though the entire project site is now considered to be a portion of Monterey State Beach, this was not always the case. State Parks has owned the approximate northern half of the project site since the early 1960's; however, the approximate southern half did not become incorporated into the park until

1991. The approximate southern half of the site was formerly home to the Phillips Petroleum tank farm. Subsequent to the removal of nine petroleum tanks, the property was transferred to a separate private entity that ultimately resulted in a proposal for residential development of the site. In short, while the City ultimately denied the proposed residential development, the property owner subsequently succeeded in obtaining a ruling of temporary takings of their property. In response to this ruling, the site was purchased through funding efforts of the California Coastal Conservancy, California Department of Parks & Recreation, California Department of Fish & Game, Wildlife Conservancy, and the Monterey Peninsula Regional Park District.

Though purchase of the southern half was funded by various public entities, the California Department of Parks & Recreation (DPR) now owns the majority of the site, with the exception of an approximate four acre back dune area (owned by the Department of Fish & Game) and the Sand Dunes Drive right-of way (owned by the City of Monterey). Overall, though, DPR is responsible for day-to-day management of the entire site through a cooperative agreement with the Department of Fish & Game and the City of Monterey.

Current Site Conditions

The project site consists primarily of existing disturbed and partially restored coastal dunes. The old tank farm road traverses approximately 1800 linear feet through the back dunes (roughly paralleling Highway One), and the western most portion of Sand Dunes Drive parallels the ocean for a distance of approximately 1100 feet and terminates at a cu-de-sac (See Figure 1 below for road locations). While automobiles do not currently use the existing tank farm road, Sand Dunes Drive is accessible to automotive, pedestrian, and bicycle traffic during daylight hours; is most frequently utilized by persons parallel parked along the road to obtain coastal views.

As could be expected, the sites former use for petroleum storage left a lasting mark upon the site. The most notable remnants of this past land use include the access road mentioned above, the nine former tank locations, and a large staging area at the middle of the site. The site was subject to a site remediation effort and, according to the County Department of Health, clean up of the site was accomplished.[1] Notwithstanding these visible scars, the site harbors valuable coastal resources; these include important coastal views from Highway One, environmentally sensitive species and habitat, as well as the potential for additional public access and recreational amenities.

According to State Parks, habitat restoration and monitoring activities have been conducted at the site since 1992; these activities have included revegetation, exotic species control, sensitive species monitoring, and recreational use monitoring. In order to protect dune areas from overuse, Monterey State Beach currently has a closure order in effect which prohibits public access to sections of dune or beach that are designated by signage or fencing. Also, State Parks utilizes the closure order to secure any areas which the Western Snowy Plover (*Charadrius alexandrinus nivosus*) nest. Under the proposed project, State Parks would continue to apply the closure order to the site, and, in fact, public access would be limited to only the paved areas of the recreation trail and parking lot, a vertical accessway to the beach, as well as lateral access along the sandy beach.

[1] October 12, 1999 letter from the Monterey County Department of Health.

Figure 1. Oblique Aerial View of Project Site Illustrating Project Boundaries and Existing Paved Roads.

Project Description

The California Department of Parks & Recreation and the City of Monterey request approval to: (1) construct an approximate 4000-foot (14 foot wide) recreation trail through coastal dunes between the intersection of Sand Dunes Drive and Canyon Del Rey and the intersection of Del Monte Boulevard and Ramona Avenue; (2) remove approximately 200 linear feet (2000 square feet) of asphalt paving from former petroleum tank farm road; (3) removal of approximately 200 linear feet at the end of Sand Dunes Drive, as well as decreasing its width from 25 to 14 feet; (3) consolidation of coastal access parking into a new 29-space parking lot with associated landscaping; and (4) restoration of approximately 8 acres of existing disturbed dunes. See exhibit B for engineered project plans.

As mentioned, the applicants have proposed to implement a variety of habitat restoration and monitoring activities, outlined in a draft Habitat Conservation Plan[2], as part of the coastal development permit application. (See ESHA findings below for further detail on proposed restoration activities)

Once completed, the applicant's state that the project will improve bicycle travel along the Monterey

[2] *Habitat Conservation Plan for the Federally Threatened Western Snowy Plover, the Federally Endangered Smith's Blue Butterfly and Other Species of Special Concern Associated with the Coastal Access and Habitat Improvement Project within Monterey State Beach, Monterey, California,* July 12, 2000 DRAFT.

Bay Coastal Trail and restore degraded coastal sand dune habitat. More specifically, they state that this would be accomplished by:

- Improved continuity along the existing Monterey Recreation Trail through the provision of a continuous Class I bicycle route from Lover's Lane I Pacific Grove, through the City of Marina;
- Resolution of an existing safety problem for bicycle riders traveling between Roberts Avenue and Sand Dunes Drive;
- Increase in opportunities for bicycle commuting between the Sand City/Seaside areas to Monterey City; and
- Enhancement of habitat for the Western Snowy Plover and Smith's Blue Butterfly, as well as other native coastal dune species.

B. Coastal Act Issues

1. Land Use Priorities

Public access and recreation, as well as habitat enhancement and restoration, are high priority land uses under the Coastal Act.

Coastal Act § 30001.5 states in part:

> *The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:*
>
> *(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources….*
>
> *(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*

Coastal Act Sections 30213 and 30221 prescribed priority for proposed land use in this case and states:

> *§ 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*
>
> *§ 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

The project site currently provides public access and recreational opportunities, at no cost, for members of the public.

Section 30001.5 sets forth the goal of maximizing public access, consistent with sound resource conservation principles. Section 30001.5 also sets forth the goal of enhancing and restoring coastal resources. Section 30221 ascribes the priority of recreational land use at the project site's ocean front location. Hence, public access and recreation, and coastal dune habitat restoration must be considered a high priority land use for the project site. Under the proposed project, such public access and recreational opportunities would remain, though, modified in an attempt to better address existing environmentally sensitive habitat and species conflicts with public access, as well as through the facilitation of improved connectivity of the site to other adjacent public access pathways. Also, the proposed project would result in the restoration of important environmentally sensitive habitat areas.

The proposed project would facilitate improved public access at the site and serve to restore degraded coastal dune habitat, and therefore would further priority land uses under the Coastal Act. Accordingly, the Commission finds that the proposed development presents high priority coastal land uses that are consistent with the land use priorities of Coastal Act Sections 30001.5, 30213, and 30221.

2. Environmentally Sensitive Habitat Areas (ESHAs)

Coastal Act § 30240 affords protection of environmentally sensitive habitat areas and states,

> *§ 30240: (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Likewise, Coastal Act sections 30212 and 30214 are relevant to the protection of environmentally sensitive areas and, in this case, are applicable since this project proposes public access through coastal dunes. These sections state,

> *§ 30212: (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
>
> *(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*

§ 30214: (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

The City and State Parks are proposing to extend a public bikepath mostly along an existing road and partly through degraded dune habitat that exists at the site. They are also proposing to relocate existing public parking to a location adjacent to an existing hotel parking lot and road, and to remove part of the existing road to the current parking area. With the relocation of the parking lot and the use of an existing road alignment for the bike path, there will be little to no new disturbance of the project site on balance.

More important, the project is proposing to restore approximately eight acres of existing degraded dune habitat. The most significant restoration effort will be focused upon the former tank pads and staging area. More specifically, the following restoration activities will be accomplished under the project:

1. The former tank pad locations (over one acre) will be covered with clean sand, recontoured to a natural dune topography, and planted with native dune species;

2. Over 6,400 cubic yards of non-native fill material will be excavated from the former tank farm staging area (four acres) and topographically restored with native sand material and vegetation to create wind-free microclimates to benefit the Smith's Blue Butterfly;

3. Approximately 10,000 square feet of paving will be removed along the existing length of Sand Dunes Drives at the project site, resulting in a recreation path further away from know Western Snowy Plover nesting areas;

4. Existing patches of non-native invasive species will be eradicated by a combination of herbicide application and physical removal;

5. Over two acres of dunes within the Caltrans right-of-way will be restored with native vegetation;

6. Monterey Spineflower seed will be collected and used to expand existing populations; and

7. Over the long-term, State Park's plans to introduce the Smith's Blue Butterfly and Sand Gilia to the project site so that they may utilize the restored dunes.

All of the above listed dune restoration activities are dependent upon the dune resource, consistent with section 30240.

On balance, the project will enhance dune habitat and ultimately support the long-term restoration of part of the Monterey Dunes System (also known as the Seaside dune system) in this location. Geologists (Cooper et al) describe the dune system as having three main components, each layered upon one another with the oldest layers on the bottom: youngest are the Recent dunes, such as those found around Moss Landing and which are still in the process of building. The most ancient are the pre-Flandrian dunes, mostly located inland from Highway 1 and falling outside the coastal zone.

The highest and most dramatic component of the system is the strand of Flandrian-era dunes, named for an Ice Age event known as the Flandrian Transgression. These high dunes run as a narrow but continuous formation along the shoreline of Monterey Bay, beginning at the Salinas River and reaching approximately 13 miles to Monterey Harbor. The dune system traverses a variety of governmental jurisdictions: Monterey County, the City of Marina, California State Parks, U.S. Army (former Fort Ord), City of Sand City, Monterey Peninsula Regional Park District, City of Seaside, the City of Monterey and the U.S. Naval Postgraduate School. The Coastal Zone boundary through this region primarily follows Highway 1 which, for the most part is the first public road paralleling the sea. The remnant pre-Flandrian dunes inland of Highway 1 in the cities of Monterey, Seaside, and Sand City have suffered severe impacts and are mostly already developed. While the high Flandrian dunes are also impacted, at present several largely undeveloped sections remain along the shoreline.

The significance of the natural resource values of the Monterey Bay dunes – particularly the Flandrian component along the shoreline -- is well recognized, as is the potential to restore and enhance these values in degraded areas (see more detail below). Several major dune restoration programs are underway in the vicinity of the project site. A significant restoration effort has taken place to the north of the proposed project, on a former dumpsite that was acquired and remediated by the Monterey Peninsula Regional Park District. Farther north of the project site, State Parks intends to protect and restore 700 acres of dune habitat on dunes of the former Fort Ord seaward of Highway One. Other notable restoration areas within the dune system include State Park's restoration efforts at Monterey (project site), Seaside, Marina, and Moss Landing State beaches, and the Navy's restoration of 44 acres of beach area at the Naval Post Graduate School in the City of Monterey. In particular, previous restoration efforts at the project site by State Parks have proved successful when compared to the description contained the Park's 1987 General Plan, which states, "there is very little vegetation left on the scalped and drifting sand dunes that remain on the property, and without vegetation there is a lack of land-based fauna." Though portions of the project site remain degraded, habitat conditions have improved substantially since the writing of the Plan.

One of the most critical functions of the dune system is its role as habitat for very unique flora and fauna. These are species which are specially adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

Specifically, several native plants known to occur in the dunes are either already listed, or are on the

candidate list for the federal register of endangered and threatened species. These include the Seaside bird's beak (*Cordulanthus rigidus littoralis*), sand gilia (*Gilia tenuiflora arenaria*), Sandmat manzanita (*Arctostaphylus pumila*), Eastwood's ericameria (*Ericameria fasciculata*), coast wallflower (*Erysimum ammophilum*), Menzies wallflower (*Erysimum menziesii*)and Monterey ceanothus (*Ceanothus rigidus*). The Seaside bird's beak is protected under the California Plant Protection Act of 1977. All seven species are recognized as rare by the California Native Plant Society. The sand gilia is both state-listed and federal-listed. Another sand-stabilizing plant species, the Monterey spineflower (*Chorizanthe pungens var. pungens*), is also found in the Monterey Bay dunes (including the project site), and has been listed in the Federal Register as an endangered species (U.S. Fish & Wildlife Service notice of February 14, 1994).

The U.S. Fish & Wildlife Service has also listed the Western snowy plover as a threatened species. These birds forage along the shoreline and nest in the foredunes of the Flandrian system. The plovers are known to nest in various areas of the dunes, including the project site, and have been the focus of significant conservation efforts by the State Dept. of Parks and Recreation (see below for more detail).

Another species of concern existing within the dune system is the Smith's blue butterfly (*Euphilotes enoptes smithi*), a federally protected animal species listed as endangered by the U.S. Fish and Wildlife Service. Coast buckwheat (*Eriogonum parvifolium* and *E. latifolium*), are host plants to the Smith's blue butterfly, and occur in clusters that support localized populations of the butterfly. The black legless lizard (*Anniella pulchra nigra*), another native species of the Monterey Bay dunes, has previously been a candidate for federal listing as endangered, and is considered a Species of Concern by the California Department of Fish & Game because of its limited distribution.

While the distribution of these dune plants and animals may appear sparse to the uninitiated, over time they can collectively be expected to utilize the entire available dune surface. This is because the Flandrian component of the dunes complex is a dynamic system. The dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Thus, a plant like Monterey spineflower may over a year or two use up the available moisture and nutrients at a particular site, and by means of wind-blown seed “move” to a neighboring area. In this simplified model, the original site remains a bare sand surface until life’s necessities again accumulate at the original site—thereby allowing recolonization and repeating of the cycle. Therefore, the overall growing area (“habitat”) needed over the long run is vastly larger than the area occupied by the plants at any one “snapshot” in time. This also helps explain why the entire dune surface—not just the locations where the plants (and animals) are found in any one particular year—must be considered as ESHA. More detail on this aspect of the dunes ESHA is presented in the discussion of the project site below.

The project site currently contains a mixture of degraded and restored coastal dunes. Although past land practices have altered the habitat qualities of the site, it nonetheless currently supports rare and important native dune habitats. This includes the central portion of the site that provides nesting habitat for the federally threatened Western Snowy Plover. Given the rarity, sensitivity, and historic

decline of the dune habitats native to the Monterey Bay dunes, successful recovery of this habitat is dependent upon the protection and biological enhancement of existing and disturbed yet restorable dune areas alike.

In summary, this project will enhance degraded habitat and eliminate existing paved areas along the shoreline. Although the relocated parking will be located in low-lying dunes, this area consists of degraded habitat that is fragmented from the larger area of dune habitat that will be restored. It currently does not provide significant habitat value for the larger dunes system. Furthermore, a December 22, 2000 letter from Ken Gray of State Parks, confirms that the dune area nearest the Monterey Beach Hotel is wind-swept and of low habitat quality. Nevertheless, the presence of motor vehicles and an impervious surface near the shoreline could result in non-point source pollution. Thus, final drainage plans are necessary as detailed in condition #2.

Finally, as discussed in the next finding, the project will maximize public access by maintaining existing beach parking in this vicinity and by providing a public bikepath and pedestrian access along the coast. In conjunction with the habitat restoration component of the project, this path will also provide for interpretation of the dunes habitat in this location. Thus, the access component of the project provides an additional habitat protection benefit by bringing the public to a restored dune habitat area for appreciation and interpretation of the resource. There is, of course, the potential for park visitors who use the parking lot and/or bike path to disturb the habitat. Therefore, it is necessary for the Department to have an interpretation plan to alert uses to stay out of sensitive areas and the like. An interim plan can be prepared as part of or in conjunction with the required Habitat Conservation Plan. Over time the results of required monitoring may suggest some different long-term strategies for providing public access consistent with protecting the habitat. As noted, State Parks has a General Plan for a portion of the site that will need to be updated to account for the habitat restoration activities. It will also have to be expanded to include the former Phillips Petroleum site. This update can factor in the monitoring that will occur and can be submitted to the Commission for review and approval to. Overall, with the significant resource-dependent habitat restoration component, minimal disturbance of degraded dunes, and provision of public access, interpretation, and opportunity to experience the Monterey Dunes system in an urban environment, the project, as conditioned for an interim interpretation plan and a longer-term overall General Plan revision, is consistent with Coastal Act § 30240.

3. Public Recreation and Access

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road.

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

§ 30210: In carrying out the requirement of Section 4 of Article X of the California

Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

§ 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

§ 30212 (a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects….

§ 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

§ 30214 (a): The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case….

§ 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

§ 30224: Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, [..] providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Likewise, Coastal Act § 30240 (b) also requires that development not interfere with recreational areas and states,

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

As discussed, there are a number of public access amenities in the vicinity and local region. Monterey State Beach consists of two parcels; the first of which includes the project site (northern-portion State Beach), and the second includes the approximate 16-acre southern portion lying downcoast, to the west of the U.S. Naval Postgraduate School. Other state beaches in the region of the project site include Marina State Beach to the north and Asilomar Beach to the west. There are also a number of other public access and recreational amenities located in the project's vicinity. These include: (1) Monterey Bay Recreation Trail to the west and east, (2) Roberts Lake to the south,

(3) vertical beach access at the U.S. Navy Post Graduate School, (4) lateral public beach access, and (5) the City of Monterey Wharf numbers one and two.

In terms of the project site, public access to and along the coast is currently provided for via Sand Dunes Drive. This access is possible at no cost to the public from the hours of sunrise to sunset. Vertical and lateral public beach access is also provided at the State Parks parking lot to the north of the Monterey Beach Hotel. While the project site currently provides public access amenities, and is surrounded by other public amenities, the connectivity between these areas is not ideal.

The proposed project would maximize access to and along the coast by providing better connectivity with adjacent coastal access routes, all in a manner which best protects these sensitive dune habitats. More specifically, the proposed recreation trail would provide a direct linkage to the Monterey Bay Recreation Trail which currently skirts the eastern border of the site. How this link will be signed and managed to account for habitat issues in conjunction with the existing Monterey Bay Recreational Trail can be addressed in the required Interpretation Plan and long-term General Plan revision. Also, the proposed recreation trail would be aligned in a manner that would not significantly disrupt the continuance of adjacent ESHA areas. As discussed, the proposed pathway would utilize the existing Sand Dunes Drive, and in doing so, would remove this ocean front parking. In order to address the issue of parking loss, the applicants propose to replace parking at a ratio of 1:1 within the degraded dunes adjacent to the Monterey Beach Hotel and Sand Dunes Drive. Placement of parking at this location would serve to remove disturbances further away from known Western Snowy Plover nesting sites, and place development more appropriately adjacent to existing developed areas. Similarly, the proposed parking lot would result in more contiguous habitat area overall. In conclusion, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30210 through 30214 and 30220 through 30224.

4. Visual Resources

Section 30251 of the Coastal Act states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and requires in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas. This section states in full,

> *§ 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The project site is the first beach access visible to the Highway 1 traveler between Moss Landing to

the north and Carmel State Beach to the south. As such, the project site is located within an important public viewshed, and worthy of protection under Coastal Act § 30251. In terms of public viewing areas surrounding the project site, these include Highway One, Monterey State Beach ocean frontage, and the waters of Monterey Bay. The proposed project presents a low-lying development type that would not obstruct coastal views. Also, the proposed parking lot would not obstruct coastal views from Highway One. Overall, the proposed project will actually enhance the visual character of the site by way of the proposed dune restoration. Therefore, in light of these facts, the Commission finds that the proposed project is consistent with Coastal Act § 30251.

5. Geologically Stable Development

Section 30253 of the Coastal Act requires that new development assure structural integrity and minimize risks to life and property, and states:

> *§ 30253: New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The proposed pathway would traverse through coastal dunes from a connection at the existing City of Monterey recreation trail fronting Del Monte Boulevard, and then connect the existing tank farm road to Sand Dunes Drive. In terms of issues raised by the project under Coastal Act § 30253, the portion of the proposed pathway at Sand Dunes Drive is of primary concern as it is currently approximately 50 feet from the high water mark of the Monterey Bay.

Although Sand Dunes Drive (a portion of which would constitute the pathway) has remained in tact to date, evidence of coastal erosion is evident on nearby properties; these properties contain structures that have become in danger of coastal erosion in the recent past. More specifically, the adjacent Ocean Harbor House to the south of the project site has been the subject of previous coastal erosion studies. According to predicted rates of sand dune retreat due to surf action taken in 1983, 1993, and 1998 by Rogers E. Johnson & Associates, the bluff at Ocean Harbor House has retreated at an average of 31 inches or approximately 2.6 feet, per year.[3] In fact, the Commission has allowed the placement of a temporary sand berm to protect the Ocean Harbor House site on at least three occasions in the past. Likewise, the adjacent Monterey Beach Hotel to the north of the project site has been subject of coastal erosion in the past, and this has resulted in the construction of a seawall at the site.

Irrespective of these coastal erosion issues, the applicant's have committed to relocating the path in the future in the event that it becomes in danger of erosion. The Commission finds that the proposed relocation represents a reasonable alternative to shoreline protection, and would result in

[3] *Ocean Harbor House Condominiums, Encroachment Permit Application and Alternatives Analysis,* EMC Planning Group Inc., September 23, 1999.

development that is consistent with Coastal Act § 30253. Nonetheless, in order to assure that shoreline protection is never proposed at this location, this permit requires the applicants to agree to an assumption of risk and commitment towards no future proposals for shoreline protection. Therefore, the Commission finds that, only by imposing special condition two, can the proposed project be found consistent with Coastal Act § 30253.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that as conditioned the proposed project will not have significant adverse effects on the environment within the meaning of CEQA; that there are no feasible alternatives which would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned, is in conformance with CEQA requirements.